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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 523/2022 and CM APPL. 26549/2022 (stay)

SHREE VARDHMAN INFRAHOME
PRIVATE LIMITED

..... Petitioner

Through: Mr. Shalabh Singhal, Adv.

versus

KUSHAL VERMA & ANR. Respondents

Through: Mr. Chatur Singh, Adv. with
Respondent Mr. Amit Agarwal
Ms. Bihu Sharma and Mr. Akshay C.
Shrivastava, Advs. for the applicant/SBI

+ CM(M) 536/2022 and CM APPL. 26605/2022

SHREE VARDHMAN INFRAHOME
PRIVATE LIMITED

..... Petitioner

Through: Mr. Shalabh Singhal, Adv.

versus

AMIT AGGARWAL & ANR. Respondents

Through: Mr. Chatur Singh, Adv. with
Respondent Mr. Amit Agarwal
Ms. Bihu Sharma and Mr. Akshay C.
Shrivastava, Advs. for the applicant/SBI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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07.07.2022

1. These petitions, under Article 227 of the Constitution of India, assail order dated 25th April, 2022, passed by the learned National Consumer Disputes Redressal Commission (“the learned NCDRC”) in

a batch of execution applications, seeking execution of the order dated 15th January, 2019, passed by the learned NCRDC in Consumer Case no. 1893/2017 (*Flora Welfare Association Vs. Shree Vardhman Infracome Pvt. Ltd*).

2. The order dated 15th January, 2019 reads thus:

“Dated: 15 Jan 2019

ORDER

The matter has been settled between the parties. The learned counsel for the complainant, on instructions from Mr. Sangeet Bali, President of the complainant association who is present in the Court, seeks disposal of the complaint in terms of the written settlement dated 15.01.2019 which is annexed to the application IA No.894 of 2019 filed today in the Court for recording the settlement. The complaint is accordingly disposed of in terms of the settlement dated 15.01.2019 which shall form part of this order. It is also made clear that in case the OP offers to pay the balance payable in kind, such as through additional parking, additional power back-up etc. as per clause 4 and para 2 of the settlement, which shall be for the discretion of the concerned allottees whether to accept such balance in kind such as additional parking, additional power back-up etc. or not. In the event they are not agreeable to accept the said balance in kind, the OP shall pay the balance to them by way of Demand Drafts/bank transfers etc. It has also been agreed between the parties and is ordered accordingly that the aforesaid settlement would not be treated as a binding precedent.”

3. The settlement agreement dated 15th January, 2019, in terms of which the learned NCDRC had, *vide* the afore-extracted order dated 15th January 2019, disposed of Consumer Case 1893/2017, required the petitioner to, *inter alia*, handover possession of the completed flats/units to the members of Flora Welfare Association, the complainant in Consumer Case 1893/2017, on or before 31st

December, 2019, to apply with the concerned authorities for obtaining occupancy certificate in respect of the units on or before 31st March, 2020, and to obtain the occupancy certificate on or before 31st August, 2020.

4. The settlement agreement also incorporated the following clause:

“(d) It is agreed and understood that the terms of the Apartment Buyer Agreement in so far as the same are not inconsistent with the terms of this settlement, shall continue to binding between the parties.”

5. The “Apartment Buyer Agreement” (hereinafter referred to as the “ABA”) was, it may be noted, the agreement dated 16th January, 2012 referred to the individual agreements executed between the flat buyers and the petitioner, the alleged breach of the obligations contained in which constituted the basis of Consumer Case 1893/2017.

6. The ABAs, which were identically worded, provided for *force majeure* in Clause 14(a), which reads thus:

“14.(a) The Construction of the Flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular tower/ block in which the Flat is located with a grace period of six (6) months, on receipt of sanction of the building plans/ revised plans and all other approvals subject to force majeure including any restraint / restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of Company and subject to timely payments by the Buyer(s) in the Said Complex. No claims by way of damages/ compensation shall be against the Company in case of delay in handing over the possession on account of said reasons. For the

purposes of this Agreement, the date of application for issuance of occupancy / completion /part completion certificate of the Said Complex or the Flat shall be deemed to be the date of completion. The Company on completion of construction shall issue a final call notice to the Buyer(s), who shall remit all dues within thirty (30) days thereof and take possession of the Flat after execution of Sale Deed. If possession is not taken by the Buyer(s) within thirty (30) days of offer of possession, the Buyer(s) shall be deemed to have taken possession for the purposes of this Agreement and for the purposes of payment of the maintenance charges, taxes, property tax or any other tax imposable upon the Flat.”

7. Learned Counsel for the parties are *ad idem* that there was no other provision relating to *force majeure*, to be found in the ABAs. In other words, unlike normal commercial contracts which provide, in the case of *force majeure*, for a notice of *force majeure* to be issued within a stipulated period within the occurrence of the *force majeure*, etc., no such stipulations are to be found in the ABAs.

8. On 25th August, 2020, the petitioner addressed individual communications to each of the flat buyers, which reads thus:

“Ref: SVIPL12020-21/8661 Dated: 25/08/2020

CUST_ID: GF034
DR SWADESHKUMAR
S/O MR JAI SINGH
FL. NO, 488, NATHUPUR, DLF-III,
GURGAON, HARYANA PIN - 122002
PH.. 9911635096

Dear Sir/Ma'am,

Greetings from Shree Vardhman Group

“1. This is in reference to the settlement agreement dated

15.01.2019 (“Settlement Agreement”) executed by and between us and Flora Welfare Association (“Association”) which has been rectified by you as one of the members of the Association.

2. The Settlement Agreement recorded, inter-alia, steps towards timely completion of the project and also dates for achieving various milestones as detailed therein. We left no stone unturned for discharging our obligations under the Settlement Agreement and as result we have been able to complete the construction for Tower B1, B2 & B3 and applied for the OC for these towers on 16.11.2019. Few photographs of the project showing current status are attached herewith for your perusal. The Allottees of these towers have already been offered possession for the limited purpose of fit outs and many of them have already taken possession of their respective units after full and final settlement of their respective accounts with us. For the remaining towers, though we have been able to complete major construction activities, however, all our plans and efforts to complete the said towers and offer possession have been hit due to Force Majure and reasons beyond our control.

3. The Environmental Pollution (Prevention and Control) Authority for NCR (“EPCA”) vide its notification bearing No.EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6pm to 6am) from 26.10.2019 to 30.10.2019 which was later on converted into complete 24 hours ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification No.EPCA-R/2019/L-53 dated 01.11.2019. The Hon’ble Supreme Court of India vide its order dated 04.11.2019 passed in Writ Petition No.13029/1985 titled as M.C. Mehta.... vs..... Union of India completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon’ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native States/ Villages creating an acute shortage of labourers in NCR region. Due to the said shortage in construction activity could not resume at full throttle even after lifting of ban by the Hon’ble Supreme Court.

4. Even before the normalcy in construction activity

could resume, the world was hit by the 'Covid-19' pandemic. The whole world is still reeling from the outbreak and widespread of the corona virus and normal business operations have been substantially disrupted globally due to the same. The concern with respect to the spread of Covid-19 pandemic has been noticed, acknowledged and certified by various governments across the globe including the Government of India ("GOI"), and governments across the globe including the GOI have been taking various stringent and extreme actions to curb the outbreak and spread of the Covid-19 pandemic.

5. As an initial step, the Ministry of Home Affairs, GOI *vide* notification dated March 24, 2020 bearing no.40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty one) days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the lockdown has not been completely lifted. Various state governments have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial activity and construction work, etc.

6. In addition to the above, due to closure of commercial and construction activities, and fearing loss of livelihood and social security, labourers across the country took extreme steps to get back to their native villages and towns and the whole country witnesses an unprecedented exodus of these migrant labourers from satellite towns including NCR. On account of such mass migration of the labourers to their native state, we are currently facing shortage of labourers and difficulty in resuming the construction activities. Further, on account of stringent inter-state border restrictions and restriction on movement of goods across the country, the procurement of material required for construction also became difficult in these challenging times and the same brought the construction activities to a grinding halt.

7. Furthermore, the sale of the apartments/ units has also taken a severe hit as Covit-19 has affected the Indian economy and led to a massive economic slowdown and loss

of job security, due to which the prospective customers are reluctant to invest in real estate projects.

8. Please also note that pursuant to issuance of advisory by the GOI *vide* office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the Real Estates (Regulation and Development) Act, 2016 due to '*force majeure*', the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 (six) months for all real estate projects whose registration or completion date expired and, or, was supposed to expire on or after March 25, 2020.

9. Please note that the current circumstances have put us in the midst of testing times and an extremely adverse situation. However we are confident that with your cooperation and support we shall overcome this unprecedented adversity and deliver our project to our valued customers.

10. Accordingly, in light of the aforesaid circumstances the dates for achieving various milestones as mentioned in the Settlement Agreement are required to be extended; and a period of five months from 25.10.2019 to 25.03.2020 due to ban/ restraint on construction activity imposed by EPCA and Hon'ble SC and its aftermath; and another period of six months for the time being from 25.03.2020 is required to be excluded while computing the periods agreed in the Settlement Agreement for achieving various milestones. As a result, the time agreed for achieving every milestone in the Settlement Agreement and extended by 11 months for the time being.

11. We hope that you will understand and cooperate with us to deal with the present unprecedented situation and facilitate an early delivery of the project.

For Shree Vardhman Infrahome Pvt. Ltd.

Sd/-
Dolly Arora
(Head Customer Care)''

9. Thus, by the aforesaid communication dated 25th August, 2020, the petitioner pleaded the existence of *force majeure* conditions, which were inhibiting it from performing its obligations under the Settlement Agreement within the timelines envisaged therein and, on that ground, sought extension of the milestones envisaged in the settlement agreement by a period of eleven months.

10. On the petitioner's failing to hand over the possession of the flats, or to procure the occupancy certificate, within the timeline envisaged in the settlement agreement, the respondents filed individual execution petitions before the learned NCDRC seeking execution of the order dated 15th January, 2019. It was alleged that the settlement agreement provided that, in the event of breach, by the petitioner, in complying with its obligation envisaged by the settlement agreement within the timelines postulated therein, the individual flat buyers were entitled to walk out of the agreement and were entitled to the refund of the amounts paid by them. Alleging breach, by the petitioner, of the timelines stipulated in the settlement agreement, the execution petitions filed by the respondents sought refund of the amounts deposited by them with the petitioner, with interest.

11. I may note, here, that an objection was initially raised, by the petitioner, before the learned NCDRC, that, as the complainant in the consumer case was the association, the individual flat buyers could not maintain execution petition. This objection has, however, rightly been rejected by the learned NCDRC, observing that the settlement

agreement itself permitted the individual flat buyers to move for execution. Mr. Shalabh Singhal, learned Counsel for the petitioner has, fairly, not urged this ground in the present proceedings, and has restricted his contention before the Court to the plea of *force majeure* which was advanced before the learned NCDRC.

12. Before the learned NCDRC, the petitioner urged the plea of *force majeure* and the plea stands recorded thus, in paras 7 & 8 of the orders passed by the learned NCDRC:

7. It was further submitted that in the Settlement Agreement the principle understanding between the Parties was completion of project and delivery of possession of the respective flats. However, in certain contingencies the option of refund alongwith interest, was given to the Allottees merely to deter the Opposite Party/JD Developer against any willful default or negligence and to ensure the completion of Project within time. It was further stated that conjoint reading of Clauses 3, 5 and 6 of the Settlement Agreement makes it clear that in normal prevailing conditions, the Developer had time till December 2020 to obtain occupancy certificate for offering possession of the Flats. It was submitted that as per terms of the Settlement Agreement, they have paid interest till December 2019 to all the Allottees. But due to the force majeure conditions, which were beyond their control and duly accepted in the Settlement Agreement, i.e., bans on construction activities by EPCA and Hon'ble Supreme Court, nationwide lock down and disruption of supply chains for construction materials due to Covid-19 pandemic and shortage of labour etc., the Occupancy Certificate could not be procured in time.

8. In support of his contention the Opposite Party / JD Developer relied upon Order dated 08.03.2021 passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 / 2020, in which it has been held as under:-

“2.We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings....”

13. Thus, it is clear that *force majeure* was pleaded, by the petitioner, not only on the basis of the order dated 8th March, 2020 passed by the Supreme Court in *Suo Motu Writ Petition 3/2020*, but also on the ground of nationwide lockdown, disruption of supply chain of construction materials due to Covid-2019 pandemic, shortage of labour and bans on construction activities by the EPCA and the Supreme Court, amongst others.

14. Mr. Shalabh Singhal, learned Counsel for the petitioner, submits that the impugned order passed by the learned NCDRC does not examine this aspect.

15. This submission is, needless to say, contested by Mr. Sahil Sethi, learned Counsel for the respondent.

16. A perusal of the impugned orders dated 25th April, 2022, passed by the learned NCDRC reveals that the submission of Mr. Singhal is correct. Having recorded the plea of *force majeure*, as advanced by the petitioner before the learned NCDRC, as it has in paras 7 & 8 extracted supra, the learned NCDRC also proceeded to note the reliance, by the respondents, to contest the submission, on the judgment dated 29th May, 2020, passed by this Court in ***Halliburton Offshore Services Inc. v. Vedanta Limited.***¹.

17. Having thus recorded the contentions of both sides, the findings of the learned NCDRC commence from para 18 of the impugned orders dated 25th April, 2022. The only observation with respect to *force majeure*, to be found in the findings of the learned NCDRC, is contained in paras 24 and 25 of the impugned order, which read thus:

“24. The next contention of the learned Counsel for the JD Developer is that due to force majeure circumstances due to Covid-19, it could not procure the Occupancy Certificate in time. For which JD Developer relied upon Order dated 08.03.2021 passed by the Hon’ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3/ 2020*.

25. From a bare perusal of the Order dated 08.03.2021

¹ 2020 SCC OnLine Del 2068

passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3/2020*, it is crystal clear that there was direction with regard to computation of the period of limitation in filing of the Petitions/ applications/ suits/appeals/all other proceedings before any Court/Tribunal across the Country. There was no specific direction in the said Order for extension of compliance of any Order passed by any Court/Tribunal meaning thereby the Judgment Debtor cannot take the advantage of this Order in relation to their obligation in terms of the Settlement Agreement dated 15.01.2019.”

18. I am of the respectful opinion that the learned NCDRC is not correct in having observed, in para 24 of the of the impugned orders, that the petitioner was, for the purpose of its plea of *force majeure*, relying upon the order dated 8th March, 2020 passed by the Supreme Court in *Suo Motu Writ Petition 3/2020*.

19. In so observing, the learned NCDRC appears to have failed to note the fact that the plea of *force majeure* was not merely urged on the basis of the order passed by the Supreme Court, but was also predicated on the bans on construction activities by EPCA and Hon'ble Supreme Court, nationwide lock down, disruption of supply chains for construction materials due to Covid-19 pandemic and shortage of labour etc., as is noted in para 7 of the impugned orders. In other words, paras 7 and 24 of the impugned orders appear to be contradictory in terms, to the extent they refer to the plea of *force majeure*, as urged by the petitioner, and the basis on which the plea was predicated.

20. The learned NCDRC has proceeded to hold that, in its capacity as an executing Court, it could not go behind the decree. In my

respectful opinion, in examining the validity and sustainability of the plea of *force majeure*, as urged by the petitioner before it, the learned NCDRC would not be going behind the decree dated 15th January, 2019, for the simple reason that the decree was passed in terms of settlement agreement on the same day, i.e. 15th January, 2019 and the settlement agreement incorporated, by reference in Clause 7 (d) extracted supra, the terms of the ABAs executed between the petitioner and the flat buyers, insofar as they were not in conflict with any of the terms of the settlement agreement to be continue to be binding. There being no term in the settlement agreement which conflicted with the provision for *force majeure*, as contained in the ABAs, by operation of Clause 7(d) of the settlement agreement, the said clause was incorporated by reference into the settlement agreement.

21. Per sequitur, it also stood incorporated, by reference, into the decree dated 15th January, 2019.

22. Examination of the plea of *force majeure*, as urged by the petitioner, would not, therefore, require the learned NCDRC to travel behind the decree dated 15th January, 2019.

23. In this view of the matter, without entering into the merits of the controversy, or even the merits of the controversy and solely on the ground that the learned NCDRC has failed to consider the plea of *force majeure* as advanced by the petitioner before it, I deem it appropriate to dispose of these petitions by remanding the execution

petitions, forming subject matter of these proceedings, to the learned NCDRC for a reconsideration, solely on the aspect of *force majeure* as urged by the petitioner. Needless to say, this Court is not expressing any opinion on the correctness and validity of the plea of *force majeure* or on whether the decision of the learned NCDRC, on the said plea, would alter the final decision that it has taken in the impugned orders dated 25th April, 2022. It would be for the learned NCDRC to consider the plea of *force majeure* and, after taking a view thereon, to further take a view on whether the orders dated 25th April, 2022 were required to be maintained or called for any alteration or modification.

24. All aspect in this regard shall remain to be considered and decided by the learned NCDRC.

25. It is made clear that this Court has remanded the matter to the learned NCDRC solely on the ground of non-consideration of the plea of *force majeure* and has not, therefore, applied its mind to any other findings in the impugned orders dated 25th April, 2022 or as to whether the said orders can sustain on any of the other grounds which are contained therein.

26. Mr. Sethi, learned Counsel for the respondent, though he did press the petition with the requisite vigour, was ultimately, in the interests of justice and to avoid protraction of the proceedings, agreeable to this course of action but requested that a time bound framework could be fixed for the learned NCDRC to take a decision in

the above regard.

27. As such, the parties are directed to appear before the learned NCDRC on 12th July, 2022.

28. The learned NCDRC is respectfully requested to take up the matter on the said date and pass necessary orders in terms of the present judgement. Needless to say, this order would not stand in the way of the learned NCDRC, in the even that it is not convenient for the learned NCDRC to hear the matter on that day, fixing any date for the purpose.

29. Mr. Metha submits that his client is agreeable to pay the compensation to the respondents for the delays that have taken place in compliance with the timelines for completing the obligations as per the settlement agreement.

30. These petitions stand disposed of in the aforesaid terms, with no orders as to costs.

C.HARI SHANKAR, J

JULY 7, 2022

r.bararia